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THE DISTRICT OF COLUMBIA
STATEHOOD CONVENTION

7:02 o'clock p.m.
9th Floor Conference Room
D.C. University
10th and E Streets
Washington, D.C.
Monday, April 26, 1982

The above-described meeting was called to order by President Cassell, who acted as Chairman, for the purpose of discussion and vote on the report of the Preamble and Rights Committee.

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P R O C E E D I N G S

PRESIDENT CASSEL: I call the Convention to order. We will have our traditional moment of silent prayer and meditation.

[Brief silence.]

SECRETARY COOPER: Delegate Baldwin.

DELEGATE BALDWIN: Here.

SECRETARY COOPER: Delegate Barnes.

SECRETARY COOPER: Delegate Blount.

DELEGATE BLOUNT: Present.

SECRETARY COOPER: Delegate Bruning.

SECRETARY COOPER: Delegate Cassell.

DELEGATE CASSELL: Present.

SECRETARY COOPER: Delegate Clarke.

SECRETARY COOPER: Delegate Coates.

SECRETARY COOPER: Delegate Cooper. Present.

SECRETARY COOPER: Delegate Corn.

DELEGATE CORN: Here.

SECRETARY COOPER: Delegate Croft.

DELEGATE CROFT: Present.

SECRETARY COOPER: Delegate Eichhorn.

SECRETARY COOPER: Delegate Feely.

SECRETARY COOPER: Delegate Freeman.

SECRETARY COOPER: Delegate Garner.

DELEGATE GARNER: Here.

SECRETARY COOPER: Delegate Graham.

SECRETARY COOPER: Delegate Harris.

DELEGATE HARRIS: Here.

SECRETARY COOPER: Delegate Holmes.

DELEGATE HOLMES: Here.

SECRETARY COOPER: Delegate Jackson.

DELEGATE JACKSON: Present.

SECRETARY COOPER: Delegate Johnson.

DELEGATE JOHNSON: Present.

SECRETARY COOPER: Delegate Jones.

SECRETARY COOPER: Delegate Jordan.

SECRETARY COOPER: Delegate Kameny.

DELEGATE KAMENY: Here.

SECRETARY COOPER: Delegate Lockridge.

DELEGATE LOCKRIDGE: Here.

SECRETARY COOPER: Delegate Long.

SECRETARY COOPER: Delegate Love.

SECRETARY COOPER: Delegate Maguire.

DELEGATE MAGUIRE: Here.

SECRETARY COOPER: Delegate Marcus.

DELEGATE MARCUS: Good evening.

SECRETARY COOPER: Delegate Charles Mason.

SECRETARY COOPER: Delegate Hilda Mason.

SECRETARY COOPER: Delegate Brian Moore.

DELEGATE BRIAN MOORE: Present.

SECRETARY COOPER: Delegate Gary Moore.

DELEGATE GARY MOORE: Present.

SECRETARY COOPER: Delegate Talmadge Moore.

DELEGATE TALMADGE MOORE: Here.

SECRETARY COOPER: Delegate Nahikian.

DELEGATE NAHIKIAN: Here.

SECRETARY COOPER: Delegate Nixon.

DELEGATE NIXON: Here.

SECRETARY COOPER: Delegate Oulahan.

DELEGATE OULAHAN: Here.

SECRETARY COOPER: Delegate Paramore.

DELEGATE PARAMOUR: Here.

SECRETARY COOPER: Delegate Robinson.

DELEGATE ROBINSON: Here.

SECRETARY COOPER: Delegate Rothschild.

DELEGATE ROTHCHILD: Here.

SECRETARY COOPER: Delegate Schrag.

DELEGATE SCHRAG: Here.

SECRETARY COOPER: Delegate Shelton.

DELEGATE SHELTON: Present.

SECRETARY COOPER: Delegate Simmons.

DELEGATE SIMMONS: Present.

SECRETARY COOPER: Delegate Street.

DELEGATE STREET: Here.

SECRETARY COOPER: Delegate Terrell.

SECRETARY COOPER: Delegate Thomas.

DELEGATE THOMAS: Here.

SECRETARY COOPER: Delegate Warren.

DELEGATE WARREN: Here.

SECRETARY COOPER: Delegate Barnes.

Delegate Bruning.

Delegate Clarke.

Delegates Coates.

Delegate Croft.

Delegate Eichhorn.

Delegate Feely.

Delegate Freeman.

Delegate Graham.

Delegate Jones.

Delegate Jordan.

DELEGATE JORDAN: Here.

SECRETARY COOPER: Delegate Long.

Delegate Love.

Delegate Charles Mason.

DELEGATE CHARLES MASON: Here.

SECRETARY COOPER: Delegate Hilda Mason.

DELEGATE HILDA MASON: Here.

SECRETARY COOPER: Delegate Terrell.

Delegate Warren.

DELEGATE WARREN: Here.

SECRETARY COOPER: Mr. President, there are 31 Delegates present.

PRESIDENT CASSELL: All right, there being 31 Delegates present, the Convention is now in order.

Fellow Delegates, this is the moment we have been waiting for since January the 31st. We have established ourselves and gone through the process of having hearings, taking testimony, having determinations as to how we shall proceed and we have established rules and we are now ready to begin what is a very historic occasion for Washington, D.C. and for each one of us.

I want to commend all of the Committee Chairpersons and members of those committees for the work that they have done.

I have looked at several of the proposals now

and it is interesting that you can never tell by looking at a proposal the amount of work that went into it. You have got to actually read those reports themselves.

So I want to thank everybody for contributing to the expedition of what we are doing now.

As you know, we changed the order from what we had been planning before; rather than the Executive Committee meeting tonight, we have the Preamble/Rights Committee, which Committee had submitted its proposals for everyone's consideration quite some time ago. In fact, it was the only one that was fully-qualified to read tonight so the first committee will be the Preamble and Rights Committee.

Now, before we begin, I am going to ask the Secretary if he will read very clearly that part of our Rules which defines exactly how the Constitution shall be drafted. And that is Chapter Three, from beginning to end. And if there are any questions, if there is anything that is not clear, let us straighten that out first because once we start we would like for this to go smoothly and as quickly as possible.

I would point out that there is one other committee that is prepared to read tonight if, indeed, we do finish the Preamble and Rights inasmuch as we are only reading half of that Committee's report and that is the Preamble portion.

The Bill of Rights is to come later.

Mr. Secretary, let me pass this to you and have you read the Rules.

SECRETARY COOPER: Chapter Three of the Rules of the D.C. Statehood Constitutional Convention entitled "Procedure for Drafting the Constitution."

[Whereupon, the above-described rules are read.]

PRESIDENT CASSELL: Number B-2 that the Secretary just read says, "At the commencement of each first reading."

That appears to be in conflict with the first one inasmuch as the reading itself is to take place and then the period of 10 to 30 minutes for questioning.

It can't be at the commencement of each one of them.

We have talked to the Preamble and Rights Committee and they have agreed that what they will do is to read first -- read the Article and then they will explain and take questions.

SECRETARY COOPER: I will read that Rule over.

"At the commencement of each first reading, a period of 10 to 30 minutes -- subject to extension by Convention vote -- shall be set aside for the substantive Committee Chair or her or his designee to answer questions.

"At the end of the question period, formal debate will begin.

"Amendment. The proposed Article may be amended at this time by a majority of those Delegates present and voting. During consideration of proposed Article, during first and second reading, the President may recess the Convention for periods of between five and 30 minutes.

"During this time, Delegates may consult with substantive committees, consolidate similar amendments, prepare amendments in suitable form or agree among themselves on the order in which they wish amendments considered.

"Whether on on first reading, second reading or third reading, any amendments to a proposed article must be germane to that article.

"The proposed article as amended may then be adopted by a majority of those Delegates present and voting."

DELEGATE CORN: What's not clear about that?

PRESIDENT CASSELL: The way it reads is that a reading will take place. What is not entirely clear is that Rule 1 says that the "Committee Chair shall report proposed Article to the Convention at first reading." That is the first thing to happen. Okay?

B should be, rather, at the conclusion of each

first reading a period of 10 to 30 minutes shall ensue and then there will be explanations and questions, just so that it is clear.

MR. SCHRAG: Perhaps if I could clarify this, I think that it is the use of the word "reading" that is causing this difficulty. The word "reading" in the sense used in the rules here means the entire process by which we are considering the Article, not only the reading of the Article out loud but the amendment process as well and what rule means in the first two is, at the commencement of the process the question shall be addressed.

That is the nature of the word "reading" in here. It is a technical legislative term meaning consideration by the body.

DELEGATE CORN: I see what your problem is. When we drafted this, we -- when we refer to first reading, first reading is --

SEVERAL VOICES: Who gave you the floor?

The chairman didn't call on you.

I think we understand.

DELEGATE CORN: So it is correct the way it is written now, without any change.

DELEGATE ROBINSON: A point of personal privilege,

sir.

PRESIDENT CASSELL: Samuel Robinson, Ward 5.

DELEGATE ROBINSON: I am in agreement with the previous speaker in terms of a reading and discussion period of 30 minutes. However, I question if, in fact, that the explanation of first reading and all the attendant things should not have been done by the Chair under the rules of the Calendar Committee.

DELEGATE CORN: That's not in the rules, though.

SPEAKER: Delegate Corn is out of order.

SPEAKER: I want some explanation of the documents that I received tonight which is the Committee report.

PRESIDENT CASSELL: Let us finish the reading of the rules and then we can ask our questions.

Please continue, Mr. Secretary.

SECRETARY COOPER: Referral to the Committee on style and drafting.

The proposed Article shall thereby be deemed referred to the Committee on Style and Drafting which shall edit and report it back to the Convention for second reading.

PRESIDENT CASSELL: Okay, let me read from the official docket for tonight. This is the District of Columbia Statehood Constitutional Convention Proposal Docket, Docket

001. The date is April the 26th, 1982.

Number 1, SC1-1A-0001. The first reading on Title-- all right, this is the first reading of the Preamble. If there is sufficient time, if we complete that and vote on the amendments, we would then go to SC-1-4A-0002 and have the first reading of the Judiciary.

Now, are there any other questions before we begin?

Very well, then. Delegate Moore.

Let me indicate this -- if everybody speaking would come to -- I am sorry that we do not have a microphone. We will try to have a microphone for everybody so that we do not have to shout. If everyone would stand at the podium -- and there is a stool there. That is for those who would like to sit.

The chairs up front are in case the members of the committee would like to sit up front, awaiting their turn to speak.

Delegate Moore.

DELEGATE SAM MOORE: Mr. President, the Committee on Preamble is now prepared to make its report to the District of Columbia Statehood Constitutional Convention.

The actual title of the Committee is Preamble and Rights.

The Convention has mandated by its decision that the section known as 0001 shall be reported to the Convention at this time. Therefore, the Committee is pleased to make the following reading to the Delegates:

Adopted by the people on Preamble and Rights on March 17th, 1982 for submission to the D.C. Statehood Constitutional Convention for adoption as part of the Constitution.

The Preamble reads as follows:

We, the People of the Free and Sovereign State of --
_____ the blank space -- seek to secure and provide for each person health, safety and welfare, a peaceful and orderly life and the right to legal, social and economic justice and equality.

We recognize our unique and special history and the diversity and pluralism of our people and we have determined to control our collective destiny, maximize our individual freedom and govern ourselves democratically, guaranteeing to each individual and the people collectively complete and equal exercise and protection of the rights listed herein.

We reach out to all the peoples of the world in a spirit of friendship and cooperation, certain that together we can build a future of peace and harmony.

Therefore, being mindful that government exists

to serve every person, we do adopt this Constitution and establish this government.

So ends the reported Preamble.

According to the rules of the Constitutional Convention, the Chair of a Committee can elect to have another member of the committee speak to the defense of its work.

There is a report that accompanies the Preamble which has been circulated to the Delegates. I will ask Delegate Kameny to speak to the report and Delegate Michael Marcus will be the person who will speak in defense of the work of the committee during the question period and debate.

I now call upon Delegate Kameny.

[Applause.]

DELEGATE KAMENY: Thank you, Mr. Chairperson.
Mr. President.

Our committee, the Committee on Preamble and Rights, worked long and hard on the Preamble. The report that we submitted to you, it was a long one because we wanted to make clear to you the entire process, not merely just the details of the Preamble itself.

It indicates what we did and what the process was.

We wrote our own Preamble because this is our state. It is like no other.

We looked at other preambles but we did not want a carbon copy or a slavish adherence to others. We drew from them but what we have written for your approval and adoption is ours and no one else's.

The preamble that has been proposed to you was adopted by a vote of -- out of the nine members of the committee, eight yeas, no nays and one abstention.

The committee report goes over the preamble in considerable detail and deals with every word, phrase and clause in the preamble. We considered and debated every punctuation mark so there is nothing in it which was not specifically and explicably voted up by the committee.

I will not read, unless there is sentiment from the Convention as a whole, the entire committee report. That would be inordinately long. I do want to touch briefly, however, upon the content of the preamble and some of the principles which guided us in our formulation of it and our adoption of it.

The first -- the preamble is in four paragraphs.

The first one sets out some general goals for the preamble and for the constitution and for the state and indicates basically why we felt that we are here and why we are investing these 90 days of hard work.

The second section deals with some special concerns more specific than the general words and the general sentiments in the first paragraph. It deals, again, with our uniqueness and I will return to that in a little while.

It touches upon our special past history, the special history of this district, the lack of control of our own affairs and our own lives, the colonialism -- although it does not use that word under which we have all suffered and in resentment against which and in reaction to which we, once again, we are here today and these months.

The third paragraph is simply a general recognition that we do not exist alone in the world, that we do not exist alone in this country, that there are other peoples elsewhere than within the bounds of what will be our state and a desire on our part to reach out to all of those people -- all of those people in a spirit of friendship and cooperation and goodwill -- surely a sentiment to which no one can take exception.

The last section merely ties things up and in effect, implements the preamble and the constitution by indicating the two things that we are doing with the preamble and the constitution.

There is a preamble, namely, adopting the

constitution and creating and establishing the government which the constitution defines.

Now, there were certain threads, some of which I have alluded to, which pervade the preamble. We felt that there should be strong distinctions drawn because a number of us throughout the committee -- and there was no strong dissent on this of any strong distinctions between collective rights -- that is, the rights of the people to whom individuals are all too often subordinated and individual rights.

All too often, as I said, individual rights get lost in the collective. You speak of everybody. You speak of the majority and the individual person ends up nowhere.

We felt it was necessary to emphasize the rights of the individual, which is really what rights are all about. And you will find that appearing repeatedly throughout the language that we adopted.

Secondly -- and again I have alluded to this -- was a strong sense of our desire to govern ourselves after one to two centuries depending on how you calculate it -- of our not having governed ourselves to a degree unprecedented anywhere else in this country.

And once again, that is the recognizing of that as the driving force which brought us all here for this convention,

the desire to relieve ourselves of our colonial status and run our own affairs. And again, in numerous places in the preamble, you will find language which addresses itself specifically to that concern.

I indicated -- and I will conclude my initial presentation now -- by pointing out once again that first the subcommittee and then the whole committee considered every word, phrase, clause and punctuation mark in this preamble, considered it at length, revised them, scratched them out.

The report intentionally deals in almost every instance with the various versions and substitutions, the changes that we made, the revisions in language, and the reasons for those revisions so that you would know not only what we did but why we did what we did and how we arrived where we did arrive.

I am open, along with the members of my committee. There are the eight of us -- according to the rules -- who voted in favor of this preamble -- to answer your questions. And it has been the committee's decision that, subject to recognition of members of the convention by the president, I will either answer the questions or relay them to other members of the committee for an answer and in that way we can try to be most informative to you in the hope that you will ultimately

adopt our work of which our committee is truly proud and which we feel would serve our state well.

I thank you.

[Applause.]

DELEGATE SAM MOORE: Mr. President, a procedural question. The procedural question is this: is it proper now to make a motion for adoption of the preamble or would you carry on debate prior to the motion itself? Or should the debate come on the unreadiness to the motion?

PRESIDENT CASSELL: I think it may be better to go ahead and continue the response to questions in order to reduce -- possibly to reduce debate.

DELEGATE SAM MOORE: Thank you, sir. At the proper time I would be pleased to make a motion.

PRESIDENT CASSELL: Thank you. Are there other speakers? From your committee or should we have Mr. Kameny take questions now?

DELEGATE SAM MOORE: Mr. Marcus.

DELEGATE MARCUS: Thank you, sir. I am simply available to assist Dr. Kameny in the answering of questions.

DR. KAMENY: As are the other members of our committee: Delegate Marcus, Delegate Holmes, Delegate Jordan, Delegate Baldwin -- I hope I have left no one out.

SEVERAL VOICES: Rothchild. Jackson.

DELEGATE KAMENY: I mentioned Delegate Jackson.

Oh, I am sorry, I apologize.

Delegate Marcus, Delegate Holmes, Delegate Jordan, Delegate Mason -- that is Charles Mason -- Delegate Jackson, Delegate Baldwin and myself and the Chair.

SPEAKER: And Delegate Rothchild.

DELEGATE KAMENY: And Delegate Rothchild.

PRESIDENT CASSELL: Yes, the majority members and that is eight people.

DELEGATE KAMENY: Yes.

PRESIDENT CASSELL: Yes. Delegate Kameny, you may invite the members of the committee to sit with you in the front of the room if you think that would expedite the response to questions.

DELEGATE KAMENY: If any members of the committee would prefer to sit up here, it would perhaps make responses to questions somewhat easier -- as you may choose individually.

Do any members of the committee wish to sit here?

PRESIDENT CASSELL: All right, we will now move into the question period.

Are you ready?

DELEGATE KAMENY: I am ready.

PRESIDENT CASSELL: Okay. Delegate Robinson.

DELEGATE ROBINSON: Robinson, Ward 5. My question is, why, in our preamble, such a historic document, that there was no reference to the Diety. I should also like to ask, the second part of my question, did this committee take a consensus of other preambles or did this committee take a consensus of its members and purposely left out any reference to the Diety?

DELEGATE KAMENY: That question is answered in the committee report on -- I refer you to the bottom of page 2 and the original listing of concepts which is part of Attachment A, Page 1.

VOICE: Page 2.

DELEGATE KAMENY: You first start out with Attachment A, which indicates as Concept 5 -- which we considered -- and I read, "A notion of a Creator, Divine Guidance, the Lord or God Who is the Source for all of the inherent rights secured through a Constitution is mentioned in many but not all state constitutions.

"The concept is not mentioned in the U. S. Constitution.

"In our Committee Report," I read, "Particular attention was paid to Concept 5. Because there is no possible

formulation of this concept which could be satisfactory to the beliefs of all citizens and therefore, any language at all would be divisive and would be construed as imposing the views of some upon unwilling others and in view of the provisions of the First Amendment to the U. S. Constitution relating to religion, the full Committee with all nine members present voted unanimously to delete this concept."

PRESIDENT CASSELL: Further questions?

Delegate Corn.

DELEGATE CORN: I have a real problem with this because we talk about, in line 4, the "Sovereign State" and then in lines 12 and 13 we "Reach out to all the peoples of the world."

It sounds like you are establishing a government for a nation as opposed to a state to join the Union of the United States of America. Why did you leave out that concept?

DELEGATE KAVENY: Leave out which concept?

DELEGATE CORN: The concept that we are a state applying to join in the Union of the United States of America and instead putting the concept of a sovereign state with almost the freedom of a sovereign state to reach out to all the peoples of the world -- as a nation.

DELEGATE KAVENY: First, the basic principles

upon which this country is founded and from which our very nation gets its name, the United States of America and the whole philosophy that goes behind it is that we are a union of sovereign states who have delegated certain powers, limited and specifically stated, to the Federal Government but who retain full sovereignty in all other respects not delegated to the Federal Government except only, on the other side of that coin, as their own constitutions may, in turn, limit their powers.

Other than that, that is fundamental to the concept upon which this very country is founded and the phrase, therefore, is correctly used at the outset, where we refer to the sovereign state.

That is what the United States is, with the limitations that I indicated of, again, delegated powers to the Federal Government and of limitations imposed upon itself by its own constitution and those only.

The other section to which you objected, about reaching out to all peoples of the world, is simply an assertion of fellowship with the world, of a spirit of friendliness which I think that any sovereign power -- even a limited sovereign power such as a state -- certainly has the right to express and unless you would prefer to say that we reach out to

all the peoples of the world in a spirit of hostility and enmity, I don't see how it is possible to object to this particular phrasing.

DELEGATE CORN: Frank, you have not answered my question. Nowhere in this Preamble does it say, implicitly or explicitly, that we are a state in the Union of the United States.

DELEGATE MARCUS: I didn't realize that we were in a period of debate yet. I wanted to add another piece of information. The State of Hawaii also includes in its Preamble reference to reaching out to other peoples around the world.

There was an intent on the part of the Committee to recognize the international diversity of this community by placing that particular statement in there. It is understood that this city serves as home for many peoples from throughout the world.

In regard to your question, Delegate Corn, about not referring to the application of this particular state to be a member of the States of the Union, the entire process implies that this state is applying to be a Member State of the Union.

Furthermore, there are only one or two states, to

my knowledge, which implicitly state in their preamble that, in fact, they are applying to be a Member State of the Union.

DELEGATE CORN: I didn't say --

DELEGATE MARCUS: That is the answer to your question.

DELEGATE CORN: I didn't say --

VICE PRESIDENT BALDWIN: Parliamentary Rules that any debate is out of order at this time. No debate whatsoever.

You may answer questions. Debate will occur during further deliberation of the sections.

DELEGATE KAMENY: Will the Chair recognize Delegate Freeman, please?

PRESIDENT CASSELL: Yes. Delegate Freeman, please.

DELEGATE FREEMAN: Yes. Given the nastiness of the editorial by William Raspberry on the Preamble, I was wondering whether the committee ever, after that editorial came out, attempted to define the word "welfare," or did you decide to leave it to the common sense of understanding?

DELEGATE KAVENY: I --

SPEAKER: Will you repeat the question?

DELEGATE KAVENY: Yes. I can repeat it, if you wish, or she can.

DELEGATE FREEMAN: Go ahead.

DELEGATE KAVENY: The question was, given the "nastiness"-- and that was the questioner's word -- of the commentary in the Post by William Raspberry, did we make any effort further to define the word "welfare" or was that not considered necessary?

Do I have your question correct?

DELEGATE FREEMAN: Yes.

DELEGATE KAVENY: The committee itself took no action with respect to that. I, personally, wrote Mr. Raspberry a five-page letter in detailed response to each and every contention which he made, as an individual delegate and not on behalf of the Convention. I did not have the authority to to that.

And some of you have seen that letter. And in that letter I did address your contention very specifically, pointing out that the use of the word "welfare" to mean "relief" -- and that was Mr. Raspberry's word -- is something of a colloquialism and a neologism which does not have the status of the word -- I could read you my own language if any of you wish specifically. I won't burden you with it, otherwise.

Which does not have the status of the word "welfare" in its more established context of meaning the general good of the person or persons to whom it is applied.

And the Committee's feeling, insofar as I was able to ascertain it -- and obviously, the members can speak individually, surely, if they wish, concurred with my sentiments on that.

DELEGATE SAM MOORE: Mr. President, in further response to the inquiry, the Committee held two sessions of public hearings for the benefit of any citizen who wanted to have input into this process.

The subject person under discussion did not appear at a public hearing. The Committee does not choose to respond to editorials, not private petitions that are written for public consumption but could have come to the public hearing as citizens and made known their views. This did not obtain here.

[Applause.]

DELEGATE KAVENY: I specifically invited him to those hearings, notified him of the time and place and process for testifying and enclosed with my letter a copy of the hearing notice and that was sent in time for him to avail himself of the opportunity if he wished.

DELEGATE CORN: Did you ever get any response?

DELEGATE KAVENY: I got no response at all to date in any form. I keep watching the Post itself to see if he chooses to make a public response. No, there has been no

response.

DELEGATE TALMADGE MOORE: Mr. President --

PRESIDENT CASSELL: Delegate Talmadge Moore.

DELEGATE TALMADGE MOORE: I would like the Committee to explain to me the terms "pluralism," "collectively" and "socialism." Are you referring to social as interactions of peoples or are you referring to economic justice? I would like for you to emphasize that.

DELEGATE KAVENY: Yes. You asked several words. May we take them up one by one?

DELEGATE TALMADGE MOORE: Right. Would you start with "pluralism"?

DELEGATE KAVENY: "Pluralism." All right.

I refer you to our report, page 5, Section 2-B. "Respect for the right to be different from one another and to live differently from one another and for differences in origin, culture and background was recognized through the phrase 'diversity and pluralism,' where 'diversity' was considered by the Committee to relate more to individual differences and 'pluralism' was considered by the Committee to relate to group differences arising from factors such as race, ethnicity, culture, religion, minority status, et cetera."

Now, your second word? You had a list of --

DELEGATE TALMADGE MOORE: Look at line 6 in the first paragraph, "social and economic." Can you explain that?

DELEGATE KAVENY: Yes, you have a series there of three items, legal, social and economic, modified by justice and equality. And if you will read the text, that we seek to secure and provide for each person -- jumping over -- "the right to legal, social and economic justice and equality," which states three areas, "before the law, among our fellow citizens and in the marketplace in a variety of ways that we shall all, to the fullest extent that it is possible for the government to provide --" and we put it that way, because you cannot guarantee to provide them -- that we shall have, each person shall have "both justice in those three areas and equality amongst ourselves."

Now, I think you had another -- if I have not answered you, please let me know because I can elaborate further or other committee members may.

DELEGATE TALMADGE MOORE: I want to know what you mean by "economic justice." Are you speaking about the right for opportunity for jobs or the right to --

DELEGATE KAMENY: Yes. And that there shall be a lack of discrimination -- that comes out of equality -- that one shall have recourse in case of perceived injustices, in

those contexts as well as in others.

Yes?

DELEGATE JACKSON: As the debate goes on, it is unfortunate that it becomes clearer to me that maybe some of us have not looked to any of the other constitutions.

If we had, we would see that the same language used here is used in most of the other constitutions. I myself studied about 48 of the 50 constitutions.

If we looked to the Illinois Constitution, we would see the language to which Mr. Raspberry was, you know, quite strong about. But I am one who neither thinks from the pages of the Washington Post nor the bottom of a liquor bottle so it doesn't make me any difference exactly what they think.

But I have read the constitutions and they have been constitutions such as Illinois and others which have called for the economic and social equality of its citizens.

VOICE: That's right.

DELEGATE JACKSON: Most of the recent constitutions. If we have read the Constitution of Hawaii, we see that it calls for the equality of the people and for people to reach out to the world.

Now, if -- you know, I don't apologize for the fact that I have looked at and read the constitutions. I am

quite proud of it, that I have been here that long and have done that.

To those who have not looked that far, then that becomes another problem. But the language here is very clear and the language here is the compilation of the best that this country has to offer. If we can't use the best that the country has to offer, then we need nothing.

So I strongly urge the adoption of this and certainly we can refer to anybody, any question related to where the language came from and I might add, though, this, that being one who does not have the choice to -- when I leave my apartment on Columbia Road to go to the other side of Rock Creek Park or to other places, I am certainly one who is very concerned about the equality of the citizens of Washington, as has been placed in many other constitutions and of course, we stand willing to debate all of those points.

[Applause.]

DELEGATE KAVENY: As Delegate Jackson indicated, those of us on the committee read all 52 preambles, the 50 states, the United States Preamble and the Model Constitution. So we know them and we have gone through them.

Delegate Marcus, would you just add to the response to that?

DELEGATE MARCUS: Okay. In response to your question, Delegate Moore, and to highlight the statement of Delegate Jackson, let me read a portion of the Preamble of the State of Illinois:

"In order to provide for the health, safety and welfare of the people, maintain a representative and orderly government, eliminate poverty and inequality, assure legal, social and economic justice, provide opportunity for the fullest development of the individual, insure domestic tranquility," et cetera.

I just thought you would appreciate know that does appear in other state constitutions.

DELEGATE CORN: What state was that?

DELEGATE MARCUS: Illinois.

PRESIDENT CASSELL: Let me remind the speakers that we have half an hour and there are seven more minutes left so you might want to allow as much time for the questions as possible.

DELEGATE KAVENY: Although the rules do permit that to be extended.

PRESIDENT CASSELL: It can. It can if the Convention wishes.

Delegate Joel Garner, please.

DELEGATE GARNER: Thank you, Mr. President. I would like to commend the Committee and Dr. Kameny for a very nice Preamble draft.

I have either three questions or one question in three parts, if that is necessary, concerning lines 4, 5 and 6.

I would like -- certainly for the historic record and the legislative history -- for the Committee to respond to the question, what is the difference between "to secure and provide" as verbs as opposed to "promote"?

That is, what imposition does this provide on the state that the Constitution says that it seeks to provide and promote as opposed to we seek -- I'm sorry.

It seeks to secure and provide as opposed to seek to promote. That is the first part of the question.

The second part of the question is the one which I believe Delegate Moore attempted to get to and I believe the reading of the Illinois Constitution was helpful for.

But explain to me whether or not this language does not in fact say that we seek to provide the right to legal equality, social equality and economic equality. And tell me exactly what that means in terms of the imposition upon the state that we are seeking to set up.

And thirdly, more of a philosophical point, and

especially for you, Dr. Kameny, could you explain the philosophical basis for the Committee's having "we" the collective provide to individuals rights?

I believe there is a strong philosophical and historical effort in our tradition that these rights are not provided by the collective but they are naturally given to individuals which need not collectives to give them.

Could you speak to those three points, please?

DELEGATE KAMENY: Yes, let me say --

DELEGATE GARNER: I am sorry if I sounded argumentative. It was a question.

DELEGATE KAMENY: I will address that in part and I will other Delegates -- I believe Delegate Marcus and others will address it as well.

Our original language, as I indicated in the report, simply said "Provide." We quickly realized that that was unsatisfactory because no government can actually provide these things or guarantee to but that they can hope to provide them.

So we put in "to seek to secure and provide."

Now, at that point, one can get into stylistic questions. The word "promote" is certainly a valid one as a possible alternative to my mind, personally, "secure and

provide" is a stronger term without overstepping the bounds as I view those words -- at least and at least as I think the Committee did -- beyond where one can properly go.

And so we have a government who recognizes these things, that is the latter part of that sentence, as being desirable and is going to attempt to -- in some instances, there are things to be secured. That is, things which one has, which one chooses, hopes to maintain and other things -- and then other instances, instance by instance, they are things which one does not have but which one hopes to accomplish.

Therefore, to secure, which means to make fast and to provide, which means to accomplish, and both of those words are in there and it becomes more explicit than merely "promote."

Now, your next question --

[Side conversation with Delegate Marcus and Jackson.]

Do you want to speak now or later? He has two more questions.

DELEGATE JACKSON: I would like to speak to the first question. I still am amazed because, in addition to reading preambles, we should read dictionaries so -- around certain things.

The word "secure" only means one thing. It means

to "help obtain." Is that anything to debate? Is that anything that the state and Washington does not help people do today? Does the state not guarantee to those people, to the people of D.C. health and safety?

If it doesn't, then please explain to me. That is all it means.

We must also learn what the word "rights" means. The rights to legal -- it means that each citizen is entitled to, each citizen has the right to exercise certain objectives. That is all it means. If there are questions about that, then someone should ask just exactly that.

But it does not take a lawyer or a legal mind to know that.

DELEGATE JORDAN: Implicit in what you are saying is that there is no need to a reference for individuals -- at least, that is the way I hear it because you are saying that as the Constitutions in other states read, individuals are protected through the collective body.

If I am wrong, then I would like for you to correct me. Is that your position?

Is that your point? You raised a question about the emphasis on individuals. Is that right?

DELEGATE GARNER: I merely asked a question

whether or not this language is not, in fact, a collective to provide to individuals certain rights. If that is the case, then my question is answered. If that is not the case, then my question was not answered.

What is the intent of the committee?

DELEGATE JORDAN: The intent of the committee is for the collective to provide to individuals, rights. And in those specific areas that we talked about.

Now, I don't know -- I mean, I heard something in your statement that may not be there. That is why I rose to address it, Delegate Garner. The concern that I have is that as it stands now -- and I am reminded of this through a case that just came from our District of Columbia Court of Appeals for the Carol Warren case.

It has been stated by our Court of Appeals and they have said that it is a well-established fact, that the government owes no obligation to individual citizens to provide them with anything.

Specifically, in this case, it talks about furnishing police service. So I mean, we would be remiss if we became aware of some knowledge and we were going to create a state with that knowledge in our hands and we did not use it.

And I am saying it is very clear at this point

that emphasis has to be placed on a state serving individuals and protecting rights of individuals, providing services to individuals as opposed to somehow seeing that individuals might by chance receive these services and benefits and protections to the collective body.

DELEGATE BALDWIN: Delegate Garner, the answer is "Yes" to your question. It does mean collectively and we are talking, we say each person individually.

DELEGATE KAMENY: But rights themselves ultimately are enjoyed by individuals and accrue to individuals because they are there as individuals but in a complex society and a complex government, one must at least designate a kind of an interaction between the collective and the individual and that is the reason for that language.

Now, I believe you had a third question? I assume this question has been answered.

DELEGATE GARNER: Yes.

DELEGATE KAMENY: If not, let me know.

DELEGATE GARNER: The third question is about legal, social and economic modifying both justice and equality and what are the obligations upon the state that the Constitution is established to provide legal justice, social justice, economic justice -- I have no problems with that. I understand that.

But legal equality, no problem. Social equality and economic equality -- that is, the state, by this language, to what extent is it obligated -- I am not saying those are not desirable goals -- but the state is obligated to provide social and economic equality.

That is the question. Should someone, upon our becoming a state, use this language in a court as a right provided by this constitution? What is there standard.

VICE PRESIDENT BALDWIN: [Acting as Chair in temporary absence of Chair.] Dr. Kameny.

DELEGATE KAMENY: First, keeping in mind that this is a Preamble; secondly, that the state is not being obligated to provide these, but to seek to accomplish these as desirable goals.

Beyond that, your specific question would be, how would a court dispose of this? And I can't second-guess a court but first of all, of course, as far as a preamble is concerned, preambles provide little, if any, basis for litigation because they don't have legal weight. They provide a spirit.

And beyond that, this simply indicates a goal, a deliberatum that the state wishes to see people equal in society and equal in terms of their economic status so that people do not suffer disability and disadvantage economically and to

impose upon the state an obligation to attempt to remedy such disability.

DELEGATE GARNER: Thank you.

PRESIDENT CASSELL: Delegate Harris.

I presume the three questions have been answered.

DELEGATE GARNER: Yes. Thank you.

PRESIDENT CASSELL: Delegate Harris.

DELEGATE HARRIS: Yes. Delegate Kameny, I would like to ask another side to the same phrase, line 6, legal, social, economic justice and equality. I am wondering if the committee had any discussions of the fact that legal, social, and economic was limiting for justice and equality?

There is educational justice and equality, political, racial -- things on and on. I am wondering if those terms are limiting for justice and equality for the people?

DELEGATE KAMENY: If you consider the contents of the examples you have given and meditate on the contents of these words, you will find that one or another of these three terms takes in the hypothetical concepts of others and so they include these within the language.

For purposes of a preamble in a constitution, we purposely tried to be general and to avoid narrowing things down because then you will have to start saying "All rights

not included here are not excluded," the usual kind of standard verbiage. But for these purposes, we did not want to do that.

DELEGATE HARRIS: Okay, my question was not to include all of them, but some word that would include all of them. Was there any thought given to the word "liberty" in that at all?

DELEGATE KAVENY: That word, in the --

DELEGATE HARRIS: Instead of the qualifying term.

DELEGATE KAVENY: The term "liberty" as I recall it -- and I suggest a possible fault in memory to my fellow committee members -- did not come up.

It came up at one point, briefly. It was not explored in depth. Do any of my committee members recall differently?

DELEGATE MARCUS: Delegate Harris, the question of the term liberty did, in fact, come up. The issues centered around the more exclusive term and it was felt that the phrase, "The free people" was a more inclusive term than the phrase "liberty."

Further, we go on to qualify it for expansion by including the qualified terms "Legal, social and economic justice and equality."

There was a clear intent on the part of the committee to expand that as far as possible in that regard, so --

and the term "liberty" was debated in that sense.

DELEGATE HARRIS: Thank you.

PRESIDENT CASSELL: Delegate Freeman and then Robinson.

DELEGATE FREEMAN: I just wanted to put forth sort of the same question, but I just wanted to have it all very clear with the committee that you do not intend that all the rights that people have individually are enumerated in here.

These are some but there may well be others .

DELEGATE MARCUS: That is right. Sure.

SPEAKER: Didn't hear you.

DELEGATE FREEMAN: There are rights other than those listed in this, the preamble. I wanted a statement from the committee that there may well be other rights not enumerated in the preamble.

DELEGATE KAMENY: Yes. Keep in mind that we are at work now -- behind our schedule somewhat, unfortunately, because we had to write this first, on our article on rights and that will probably go into the kind of detail that this does not and make provisions, in fact, of rights not enumerated which will be included any how. There will be one section on that, our rewording of the Federal 9th Amendment and so forth. That will be in there. Yes.

And, in fact, we were talking about the wording of that just this afternoon -- for about the third time around.

PRESIDENT CASSELL: Fellow Delegates, the Secretary has just called to my attention that we are out of time and Delegate Robinson, sir, although I did recognize you, you have already spoken.

DELEGATE ROBINSON: Sir, I was standing to ask a question. Rule 3.3 states that a maximum of 30 minutes shall be allowed for questions and answers and we have gone over that period of time.

PRESIDENT CASSELL: Yes.

DELEGATE ROBINSON: And I would move that an additional 15 minutes be granted for a more fuller discussion of the report or answers to questions by the committee on the Preamble. And if I am in order, sir, I would like to so move that an additional 15 minutes be granted to this committee for answering questions on this preamble.

SEVERAL VOICES: Second the motion.

[A motion is made and seconded.]

PRESIDENT CASSELL: Yes. Not having stated in the beginning that we would deny that vote, that motion is in order. It has been moved and seconded that an additional 15 minutes be allowed for discussion and questions on this.

Is there any discussion on that?

DELEGATE CORN: I move the previous question.

PRESIDENT CASSELL: All those in favor, signify by saying aye.

[There is a chorus of ayes.]

PRESIDENT CASSELL: All those opposed?

[There is no opposition.]

PRESIDENT CASSELL: Abstained?

[There is no abstention and the motion passes unanimously.]

PRESIDENT CASSELL: Okay, another 15 minutes.

Mr. Secretary, would you time us now?

SPEAKER: Point of information, Mr. President?

PRESIDENT CASSELL: Yes.

SPEAKER: Mr. President, I rise for inquiry. Did I understand, based on your prefatory comments, you are placing the motion before us that this time because there have not been any statements to the contrary, that you allowed the motion to be heard but that that would not obtain in the future?

PRESIDENT CASSELL: Well, we are going to try to contain, you know, the discussion so that we don't run past 11:00 o'clock each night. I think we can do that in an amicable way and mostly that will be general consensus.

I am going to call on people now who have not spoken before. Delegate Rothchild. Street. And Bryan Moore.

DELEGATE ROTHCHILD: Okay, I have a question as to we recognize a unique and special history but that sort of does not describe what that unique and special history is. What was in mind in the making of that statement? What is so unique and special about our history?

I mean, there are many unique things about our history, but what was in the committee's mind?

And my other question is, what occurred to each person? Okay, now we have "we seek to secure and provide for each person." Is that all-encompassing with every person? What persons are they? Citizens or --?

DELEGATE KAVENY: I apologize. I was speaking to our Chair for just a moment. Would you repeat just the last part of your question?

DELEGATE ROTHCHILD: Yes, my question is, to the phrase "each person --" I have lost it here, now -- yes, here it is, on line 5 -- "We seek to secure and provide for each person." Is that anybody who steps within our boundaries? Is that citizens or is that registered voters? Or is that everybody in the whole world?

DELEGATE KAVENY: All right. I point out first

for the Convention that Delegate Rothchild is a member of the committee and in fact, was present throughout all debate on every one of these points so he is aware of the answers to these questions.

With respect to his first question, however, the "unique and special history," we mention in the report that the unique and special history alluded to goes back to the earliest days of our Republic and I think that to the people in this room, in this body of all bodies, the meaning should be eminently clear that this District -- what is now the District of Columbia -- has had a history which is, in fact, unique among -- for any place in this entire country, unique in the narrowest and truest sense of the word "unique."

There is no other place in the country that has had a history like ours -- such as ours.

And second, that there ore, this alludes to that history and the things that arise out of it such as I have indicated several times -- this very Convention itself. Now --

DELEGATE ROTHCHILD: The reason I asked the question was, Hawaii uses the same phrase and says "unique and special history" and they refer to an island state.

DELEGATE KAVENY: Yes --

DELEGATE ROTHCHILD: We don't refer to any such

thing in ours. We are not an island.

DELEGATE KAVENY: -- Hawaii has had its unique history and which is unique in its way and it developed it as it chose and we are developing this, as a committee, at least, up to this point, this committee has felt it was appropriate to our test.

Now, your other question?

Just a moment. Delegate Marcus wants to respond.

DELEGATE MARCUS: I would hate -- I would hate to see the history of the people of this state as being regarded as unique simply because we are the capital of the United States. We are more than the capital of the United States.

We are a crossroads for the people in this country. We are the city in a country which has the greatest degree of black government. We the city in a country which has the greatest degree of minority representation across a broad scale of economic and social classes.

We are the first truly planned city in this country. We are a city which is international in scope and so our definition as a unique place is not only a definition as the capital of the United States.

I think it is very important for us to not limit ourselves when saying that. Hawaii's history has clearly been

defined almost exclusively by its island status. Hawaii has always been an island.

The District of Columbia has not always been the District of Columbia, right? There is clear difference between those two pieces and I think that that is spoken to when we speak about a unique and special history. It is multi-categorical. Thank you.

DELEGATE KAMENY: Mr. Delegate Rothchild, you had a second question.

DELEGATE ROTHCHILD: Yes. My second question was -- my problem is not that it is not unique. It is just that there is nothing there to describe it.

DELEGATE KAMENY: Yes.

DELEGATE ROTHCHILD: The other thing is "each person" on line 5. What does "each person" mean there?

DELEGATE KAMENY: That, too, is the choice of language as to citizen, resident or whatever, was considered in committee.

Now, the committee, in each instance where that concept came up, ran into conceptual trouble with the use of the word "citizen" because it was narrower than we felt applied to all the people in what will be our state and we felt that we should not properly use a word which could cut out a

sizable number of people.

The other possibility was resident and that comes out in some other language that other committees that I know of have used.

For purposes of a preamble, which is getting at very, very fundamental issues -- rights, prerogatives, entitlements, eligibility, limitations on government as against persons and the like, the feeling was that, of the choices that we had, "persons" at this point was probably the best one.

Obviously, no state can guarantee things to persons who are 500 miles away. It applies to the people who are here as law may ultimately further define those terms.

PRESIDENT CASSELL: Delegate Street.

DELEGATE STREET: Mr. Kameny, I would like further explanation of the phrase or expression "maximize our individual freedom." I read your rationale as indicated in your commentary but somehow I am grappling with the idea of, what do you really mean about maximizing? You said "maximize your individual freedom."

DELEGATE KAMENY: Yes, once again, this returns back to one of the themes which I referred to in my introductory remarks of -- prior to a concern with and ensuring the rights of the individuals, as much as possible.

Now, obviously, one cannot totally -- permit total
ought
freedom. Obviously I do not have and I hope not ever to have
the right to ever hit you over the head, if that happens to be
the particular form of freedom that I wish to exercise.

And there are other places where limitations are
as well. But it is also our feeling that -- it was the com-
mittee's feeling that in many instances, government provides
at present -- or imposes, is a better word, more restrictions
upon the freedoms of the individuals than are necessary.

Ultimately, this comes out in the legislative pro-
cess and the political battleground, if you will. But this
sets a tone in the preamble that we wish to try to ensure the
maximum amount possible of personal freedom. And that was why
we put that in there.

There are a number of us who come from very dif-
ferent kinds of contexts within the community where in one way
or another you have had your experiences in the subcommunity
out of which you come and I have had mine in the subcommunity
out of which I come and others here have had all sorts of
different ways in which our personal rights and freedoms, in
fact, were not the maximum.

And not even the maximum, we could say, that they
could justifiably have been. I just wish to simply set a

spirit that those freedoms for all persons should be the maximum possible, consistent with the orderly kind of society indicated here.

DELEGATE STREET: Okay. My second point is, has the proposed preamble received legal approval?

DELEGATE KAVENY: No, it has not.

DELEGATE MARCUS: That is not entirely correct. It has not received the same sort of formal legal review that many portions that the proposed Bill of Rights will have received when we present it on the Floor.

However, the proposed Preamble was presented to a team of attorneys numbering six to take a look at it in light of possible proposed Bill of Rights. As you know, the Preamble holds no legal standing except as providing for a spirit of the Constitution itself.

In other words, an attorney cannot take the Preamble into a court of law and argue that this particular case is won because of one of the clauses in a particular Preamble.

It was felt -- that particular group of attorneys -- I can name them for you if you wish -- indicated that in any event, this particular Preamble would not be in conflict with any proposed Bill of Rights that we might develop, be it a maximum Bill of Rights, meaning the provision of the entire 54

concepts that the committee is currently grappling with or the much smaller number which appears in some state constitutions, so I do not believe, now, that there is any legal problem whatsoever with the Preamble as it exists.

PRESIDENT CASSELL: Let me make a comment, Delegate Kameny, in that connection. Our General Counsel, who is with us here tonight, has the responsibility to review all proposals, both individually and taken as a whole for the purpose of assisting the Style and Drafting Committee in making certain that the language is not just lawyerly but legislative and clear and consistent.

At the end of this question period, we are going to ask him to respond to questions or to give an opinion regarding the legality of this, or any legal matters concerning this.

DELEGATE KAMENY: Well, let me say, with respect to the last response, that Delegate Marcus is our very able subcommittee chairperson and he has been doing the legwork, both with respect to the Preamble and, more importantly, with respect to the formative article on rights to present this to numerous attorneys for opinions at various stages of our formulation so that we know where we are going and in a constructive kind of a way, so that we are not operating in the dark by any means for a number of us on the committee have legal

knowledge at various levels of our own so that we are pulling together a sizable amount of formal and less-formal talent.

PRESIDENT CASSELL: Okay, Brian Moore and then Talmadge Moore.

DELEGATE BRYAN MOORE: Yes, there are three areas that I have some concern about. On the whole, I think you have done a lot of work and you have done a very good job.

Question: on line 8 the words "Control our collective destiny." It conjures up some negative thoughts in my mind and it just seems to me that if you used the words "direct our collective destiny" it would be a much more positive approach and would convey the same idea.

DELEGATE KAMENY: That phrase is dealt with -- have you read the Committee Report?

DELEGATE BRYAN MOORE: Yes, I have.

DELEGATE KAMENY: All right, you know, that phrase is dealt with in the Committee Report in Section 2-C and as it stated there, the choice of language is a -- and I am adding emphasis to what is here in my intonation -- "control of collective destiny is a strong reaction to what is perceived as a present colonial status of the District of Columbia and a reassertion of the motivations underlying the drive for statehood."

In other words, it was our feeling that at this point we are now and in the historical past have been so far deprived not merely of direction but really, of control, which goes much deeper than that, that we wanted to reassert that here in somewhat stronger language than if we were coming in from a more conventional situation of reasonable direction of our destiny in the past.

DELEGATE BRYAN MOORE: It almost looks like a direction in which that would limit it. But anyway, that is my reaction.

DELEGATE KAVENY: Well, that is what states do.

DELEGATE BRYAN MOORE: Pardon me?

DELEGATE KAVENY: States do control themselves. That is what statehood is all about, legal --

PRESIDENT CASSELL: Let me remind you at this point that what we are doing is asking questions.

DELEGATE BRYAN MOORE: And my second one would be the same line, line A, about maximizing our individual freedom.

Here again, it has to me a negative connotation. It implies something without limits, almost anarchy. And I would rather see something like "protect the individual freedoms," as opposed to "maximizing" our individual freedoms.

It does not imply any discipline on our part or a

sense of responsibility and I wish that would be a debate as well.

So that was my reaction.

DELEGATE KAVENY: Well, there is a difference between guaranteeing rights which are there and maximizing those so that you will have the maximum possible. There is a subtle difference there. The committee debated a good bit of language and ultimately chose it to imply maximizing as much as possible obviously.

DELEGATE MARCUS: I would also like to call your attention to the next phrase, which is "govern ourselves democratically." The principal of governing oneself democratically does in fact facilitate the whole idea of maximizing personal freedom that one joins together in a social contract with other individuals for the purpose of setting up a government and that government is operated in a specific way in which people will all have an input.

It by no stretch of the imagination -- at least to the committee -- as far as I can tell -- connotes anarchy or chaos.

PRESIDENT CASSELL: All right, the 15-minute period has expired now. I am sorry, I was going to recognize you but we have gone past the time that was voted.

Delegate Moore.

DELEGATE SAM MOORE: Thank you, Mr. President. On behalf of the Committee on Preamble and Rights, I am very pleased to move --

PRESIDENT CASSELL: Excuse me for just a minute. I had indicated that we would have some comments from our General Counsel. May we do that first, sir?

Thank you very much.

This is Mr. Ralph Thomas.

GENERAL COUNSEL THOMAS: Thank you very much.

I should say that in the future I will hand these legal memorandums to all of you in the beginning rather than now. I came aboard rather late and I am just now --

[Interruption to ask him to use the microphone.]

GENERAL COUNSEL THOMAS: I'm sorry. In the future I will get the legal memorandums to you in the beginning so that you can have the benefit of reading it as you are asking your own questions.

Upon review of this proposed Preamble, it is clear that the members of the Committee have given very careful and conscious consideration both to the substantive content and to the specific wording.

However, in considering whether or not you should

adopt the Preamble as drafted or make any revisions, I thought it may be useful to review several general principles pertaining to constitutional interpretation.

The Federal Constitution and most state constitutions announce in the Preamble and Declarations of Rights the general principles and paramount concerns of the framers.

It has been held that preambles may not be invoked, apart from specific constitutional provisions in order to invalidate a statute or enforce a statute, as you heard a speaker here say earlier.

However, the history of the development of constitutional law demonstrates that there is a relationship between the expression of supposedly unenforceable political theories and ideas and the development of these notions into concrete legally-enforceable documents.

Now, I think you should know before you start the debate the following general rules of constitutional construction that are applicable.

First of all, state constitutions represent the supreme written will of the people who have adopted it as the framework for their government and as subject only to the limitations found in the U. S. Constitution.

Number two, in ascertaining both intent and

general purpose, the Constitution is to be construed as a whole.

Number three, courts are to avoid constructions which would render any portion of the document meaningless and are to give meaning or effect to all language when it is possible and to do so in conformity with the intentions of the framer.

Number four, provisions relating to the same subject are to be construed together.

And number five, in order to create an implied prohibition on the powers of state government, there must be an expressed affirmative provision in the Constitution from which the implied prohibition is derived.

Number six, when special and general provisions of the Constitution are in conflict, the special provisions will be given effect to the extent of their scope and general provisions will control where the special or specific provisions end.

And finally, a Bill of Rights is a part of the Constitution and is to be construed in connection with the other parts but there is some authority that since it is a declaration of general principles of government, that the Bill of Rights is limited and qualified by other parts where they

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differ.

It is my thought that this principle will also apply to Preamble.

So, in applying those principles to the draft of the Preamble that you have heard tonight, I do not believe that there is any thing legally wrong with the Preamble as drafted and that it does provide a clear statement of the intentions of the framers.

Rather, it would appear that any concerns pertaining to the language of the draft provision and any recommendations for change are likely to be based primarily upon political considerations. That is, one will be particular language or provision creates difficulties in obtaining passage and ratification of this Constitution and number two, does the particular language or provision serve any useful, enforceable purpose?

Now, without making any specific recommendations -- and it is not my job to do so -- I am merely providing legal analysis which I hope I have provided you with -- but I have made some observations.

Number one, since any state constitution is subject to and limited by the U. S. Constitution already, it cannot hurt to say so and perhaps this could assist in obtaining

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ratification and allay any doubts or fears presented by any individual phrases or provisions.

Number two, the use of the terminology, "free and sovereign state" doesn't really add any power since these will be determined by admission as a state and could possibly cause some opposition.

Number three, again the phrase, "We have determined to control our collective destiny" does not add any powers and might cause some fears or opposition. I don't know. That is for you to decide.

Number four, I was a little skeptical at first about the paragraph, "We reach out to all the peoples of the world in a spirit of friendship and cooperation."

However --

DELEGATE ROBINSON: Mr. Chair -- Mr. Chair -- excuse me. Samuel Robinson, Ward 5, Chairperson of the Rules and Calendar Committee.

His observation and personal opinion has no business in here.

PRESIDENT CASSELL: General Counsel has been asked to make some comments regarding legal aspects. These are his professional opinions and he is to speak to them.

I would ask that we not be so discourteous as to

interrupt him in making the report that we have asked him to.

DELEGATE ROBINSON: Mr. President --

PRESIDENT CASSELL: Yes, sir.

DELEGATE : I think it is perhaps most necessary that we have a report in this regard and I would like to personally state I am not prepared to vote when we come to a determination on the first reading unless we have first received the opinion of Counsel -- not in the respect that Mr. Kaveny says, that "We have talked to some lawyers somewhere," but the official Counsel of this Convention.

None of us should vote on any of these Articles unless he has rendered an opinion to us.

DELEGATE CORN: Hear, hear.

DELEGATE JACKSON: Point of information, Mr. Chairman.

PRESIDENT CASSELL: Yes.

DELEGATE JACKSON: While I have no specific problems around, the things we speak about in this Preamble are things that have been debated for some 200 years. For this, if we are going to have a General Counsel, then he must be known to me and the others as this person and, not with any offense to the gentleman there, as a person of the highest repute or a special constitutional lawyer or something.

But I do not see how it is possible for us to

bring in an attorney and that attorney render his opinion of anything, much less this, unless I know that this is a constitutional lawyer of the highest order.

No offense. And I think, in that case, I think then we have an individual whose opinions go far beyond either of the judges and I do not think that is in order.

PRESIDENT CASSELL: Let me make, hopefully, a final remark before we interrupt further the report given to us by the General Counsel.

Now, each of us as delegates has opinions and each of us has done some research. The gentleman happens to have been hired for a specific purpose. And the purpose is to give us a legal analysis as he sees it. A legal analysis.

And in the same way that we are not bound by anything that any of our staff does, we are not bound by recommendations made to us. But certainly, that individual, if he is going to be paid, as a professional person, must provide -- as Delegate Coates has said -- his own analysis.

If you agree with it, you can be bound by it. If you do not agree with it, then you need not. But there is a basis for making that kind of analysis. I would say to you also that all constitutions that had not only the benefit of a general counsel but a constitutional generalist so this is not

meant to reflect upon or to argue and I think he is being careful not to do anything other than to give you what is hoped to be useful information to be used or not to be used.

I would like to have him finish his report and I would like to have him make that kind of assistance to all of us at each one of our meetings.

Mr. Chairman, if you have something beyond that --

DELEGATE SAMUEL MOORE: No, I would like the Counsel to continue.

GENERAL COUNSEL THOMAS: Okay. Thank you.

Number four is the paragraph, "We reach out to all the peoples of the world in a spirit of friendship and cooperation," and this, again, does not add power to the state. And I was originally concerned about that one until reading the Hawaii Constitution.

It certainly expresses an important concern and the framers may very well choose to retain it for this reason. However, again, it could have some politically negative consequences by sounding too "radical" and I think you all should consider it.

Number five --

DELEGATE JACKSON: Objection, Mr. Chairman. That is out of order, Mr. Chairman. I object. He is giving his

political opinion on this. That is out of order.

[Outcry of many voices from the floor.]

GENERAL COUNSEL THOMAS: None of these are opinions.
None of these are opinions.

VOICE: That is not a legal opinion. That is a
political opinion.

DELEGATE JACKSON: He is not Thomas Jefferson.

GENERAL COUNSEL THOMAS: No, I --

DELEGATE CROFT: Point of order, Mr. Chairman.

Point of order. As I understand it --

[Continued outcry.]

DELEGATE CROFT: Point of order.

As I understand it, General Counsel has been
hired to give us legal opinion. Each one of us has our own
political opinion.

DELEGATE MARCUS: That is right.

GENERAL COUNSEL THOMAS: This is --

DELEGATE CROFT: And I would request that you
aspire to give us your legal opinion and that you focus your
comments and opinion on the legal information that is documen-
tary and any other documentary information.

DELEGATE JACKSON: He is not Thomas Jefferson.
What is he doing?

PRESIDENT CASSELL: Ladies and gentlemen, one of the things that I think we are obligated to do is -- first of all, let me say that I thought that the calibre of the presentation from the committee and all of its members was superb.

I thought that the kind of analysis that they had subjected their own recommendations to was thorough and complete and thoughtful.

I was impressed with the fact that they had anticipated every question that had been asked and that there was a reference in their explanation to point to.

Now, you have had that particular presentation. I do not know why we need to be afraid of or intimidated by or even offended by an individual who has legal counsel and would like to give advice to us. He is not insulting us. He should not be offending us.

He is giving us advice regarding the feasibility of our constitution.

Now, it seems to me that if you have feelings about that, you are fully able to express those during the debate. But to -- in the most blatant show of disrespect and discourtesy in his first appearance before us, to deny him the opportunity to afford counsel -- whether you think it is political or not -- he is not hurting us.

And I would think you would reserve -- whatever those comments are, if you must have them on the record, I would think you would reserve them until the gentleman has finished his report.

Sir, would you please -- I apologize for the twice interruption and I would like for you to finish your report.

And I would ask us all to respect that.

[Continuing off-the-record comments from the floor.]

PRESIDENT CASSELL: Delegate Street, I have not recognized you.

I just want to say something to you. I want to say something to everybody who has his hand up. There is a report being given. All attempts to speak now -- unless there is some emergency and we need to vacate the building -- are out of order. Please allow the gentleman to finish his report.

Mr. Counsel. And please do not be intimidated by anything that you heard.

[Continuing discord from floor.]

GENERAL COUNSEL THOMAS: Thank you. Number five. The fifth observation. On line 10, the word "complete" appears to be very strong. Perhaps the use of the word "full" would accomplish the same purpose.

And number six, on line 14, the phrase, "To serve

every person" might, as suggested in the committee report, be changed to "To serve the people individually and collectively" which, again, might be less likely to evoke political opposition.

That is the extent of my report. Thank you.

PRESIDENT CASSELL: Are there questions for Mr. Counsel?

Are there questions for the Counsel? I am now entertaining questions for the Counsel. To be directed to the Counsel. All right.

If the question is not directed to the Counsel, then it belongs at a later point during the debate. If the question is not directed to the Counsel, I will rule it out of order.

Ms. Street.

DELEGATE STREET: Mr. Attorney, I want to thank you for your report. I will raise the question of legal review and I want to know if we will get a copy of your comments?

GENERAL COUNSEL THOMAS: Yes, you will get -- as I said before, you will in the future get a copy of every legal analysis before every reading. I was brought on board rather late and I am doing my very best.

DELEGATE STREET: So we will be getting a report.

GENERAL COUNSEL THOMAS: Yes.

DELEGATE STREET: I will be looking and I anticipate that all of of will be looking for something in this document and I think we need the interpretation of all persons who can give us the classical interpretation from all points of view before we are faced with what people perceive these phrases to mean -- not necessarily what the committee intended but what other people perceive that it means and I thank you for your courage.

GENERAL COUNSEL THOMAS: Thank you.

PRESIDENT CASSELL: Delegates Paramour, Jordan, Marcus, Nahikian.

DELEGATE CORN: And Corn.

PRESIDENT CASSELL: And Corn.

SPEAKER: Mr. President, point of order. I had my hand up 'way before anyone else.

PRESIDENT CASSELL: Well, that is when the person saw you, sir.

SPEAKER: May I be recognized, sir?

PRESIDENT CASSELL: No, sir, of course you cannot be recognized. We are following Rules of Order.

SPEAKER: Well, I had my hand up first.

PRESIDENT CASSELL: Yes, sir. I really appreciate that. But the Vice President is advising the President of

the people since the President is trying to keep track of other things.

SPEAKER: Well, I still had my hand up first.

PRESIDENT CASSELL: Then I am sure that we apologize and we will add your name to the list.

Who is it now? Delegate Paramore?

DELEGATE PARAMORE: [Difficult to hear owing to considerable discussion off-record] I would like to thank the Counsel for his report. I thought it was very well-done.

There is just one point of information I would like for you to give me. When you used that term "radical," I would like to know first of all, is that term legal and in what sense was it used and what did it pertain to, when you used the term "radical."

GENERAL COUNSEL THOMAS: No. Okay, it was not legal. It was an observation meant in the normal sense of the term, I mean, in the regular sense of the term. I think --

DELEGATE PARAMORE: And what paragraph were you referring to when you used the term "radical"? As far as the documents?

GENERAL COUNSEL THOMAS: Okay, I was referring to "We reach out to all peoples of the world in spirit, friendship and cooperation." And it was compared to the Congress we

have now being used and the comparison effect, you know, this is not Hawaii 20 years ago and it was said as an observation, not as an opinion, that it might be something for you to consider.

DELEGATE PARAMORE: You mean that the Congress might not accept it because they think it is too radical?

GENERAL COUNSEL THOMAS: Right, that they may perceive it as too radical. But that is for you to decide.

DELEGATE HARRIS: Mr. Chair -- Mr. Chair --

PRESIDENT CASSELL: Please keep in mind that anything that is said by anybody to advise you is for us to decide but we would certainly not deny anybody the right to speak to us and to give his opinion -- especially if we think that the opinion is meant to be helpful.

The next speaker is Jordan, then Marcus, Nahikian, Corn, Thomas, Kameny, Shelton.

DELEGATE JORDAN: Mr. Chairman, I hope that I will be asking a question that will solve most of the questions for us because we need to move on, okay? So I just have one question to ask:

Is the Preamble as submitted legally sufficient?
Yes or no?

GENERAL COUNSEL THOMAS: In my opinion, it it.

DELEGATE JORDAN: Okay, then, we don't need to go through all this --

[Applause.]

DELEGATE JORDAN: What I would suggest to you is that we don't need all this discussion right now and -- [overridden by side comments] -- ancillary beyond his statement that that should be sufficient, legally sufficient and that is all we need to know from him.

PRESIDENT CASSELL: Thank you. May we thank the attorney for his suggestions to us?

[The General Counsel is excused from the podium.]

PRESIDENT CASSELL: Is there anybody who has any document that has not been reviewed? It is required that they all have a General Counsel review.

But please, as you get them ready for your presentation, make certain that they have had a review.

You are free to talk individually, also, to our General Counsel.

Delegate Moore.

DELEGATE SAM MOORE: Mr. President, on behalf of the Committee on Preamble and Rights, I am pleased to move the Preamble for the Constitution in this Convention.

SEVERAL VOICES: Second.

[The motion is made and seconded.]

PRESIDENT CASSELL: It has been moved and seconded --

DELEGATE SAM MOORE: Mr. Chairman, the report is included in the move.

PRESIDENT CASSELL: All right. It has been moved and seconded that the report given by the Committee be adopted by this body.

DELEGATE MARCUS: Mr. Chairman, point of order.

PRESIDENT CASSELL: Point of order?

DELEGATE MARCUS: Yes. In the Rule 3(A).2 the Chair of the Committee may designate a particular delegate to defend the Article for the Committee itself in debate. Does that mean that that individual receives a response privilege to statements made by Delegates on the floor?

DELEGATE CORN: What's your question, Marcus?

PRESIDENT CASSELL: Of course, anybody can be recognized to respond if the procedure allows him to designate anybody to meet that response, certainly. We would respect that right.

Delegate Harris, Oulahan, Corn and Shelton.

DELEGATE SHELTON: Point of information.

PRESIDENT CASSELL: Yes to a point of information.

DELEGATE SHELTON: Has the Counsel been advised

or is he therefore able to give out copies of this report to members of the press?

PRESIDENT CASSELL: We have given copies of the proposals to the press. There is nothing in our rules to indicate that that is to be withheld from the press. We had not thought about that. [Side conference.]

The Executive Committee seems to see no problem with the press having copies of this response. They are sitting here listening to it.

Yes, sir.

DELEGATE SAM MOORE: Mr. President and Delegates, it would appear to be under the Sunshine Law and any document that we produce is public property.

PRESIDENT CASSELL: All right, Delegate Harris, discussion.

DELEGATE HARRIS: Mr. Chair, is it in order to amend 0001?

[Several voices: Yes, it is.]

DELEGATE HARRIS: Mr. Chair, I would like to amend 0001, line 5, after "persons:" I would like to insert the word "Liberty," because its meaning is void in lines 4 through 6.

Line 8 and 9 indicate the phrase, "Maximize our individual freedom" but the Preamble does not secure and

provide freedom and liberty in lines 4 through 6.

Therefore, it is important to insert "liberty" because it means freedom not subject to restriction or control, not in confinement or under constraint and as a privilege and attitude or action not warranted by conditions. It should be inserted especially in light of our unique and special history as a people of the District of Columbia.

According to the dictionary, just means moral rightness, equity and fairness. And equality means being ^{enjoying} equal, in joint equal rights, so neither one of those actually encompass the full meaning of liberty.

SECRETARY COOPER: I second the motion.

[It is moved and seconded.]

DELEGATE SAM MOORE: Mr. President --

PRESIDENT CASSELL: Yes.

DELEGATE SAM MOORE: Mr. President, may I inquire of the Delegate where the words she has moved as an amendment and which were seconded by the Secretary should be inserted?

DELEGATE HARRIS: On line 5, after the colon after "person" before the word "health." The sentence would read, "And provide for each person liberty, health, safety and welfare."

DELEGATE SAM MOORE: Mr. President, may I ask the

Delegate if she would provide a comma after the word "liberty"?

DELEGATE HARRIS: Yes, I would.

PRESIDENT CASSELL: All right, it has been moved and seconded that this motion be amended to provide the word "liberty" immediately after the colon which follows "person."

The word "liberty" would be followed by a comma so that it would read, then, "Seek to secure and provide for each person; liberty, health, safety and welfare."

Discussion?

SPEAKER: Point of information.

PRESIDENT CASSELL: Point of information.

SPEAKER: [Overridden by side conversation] makes inquiry about minority report.

PRESIDENT CASSELL: The minority report should have been submitted with the report.

DELEGATE CORN: There was a minority report.

DELEGATE SAM MOORE: Mr. President --

PRESIDENT CASSELL: Mr. Chair.

DELEGATE SAM MOORE: Mr. President and Delegates, there was no minority report. There is only one report coming from this Committee.

PRESIDENT CASSELL: All right discussion of Delegate Harris' amendment. Delegate Corn.

DELEGATE CORN: I would like to move a substitute motion.

PRESIDENT CASSELL: Yes, Mr. Chairman.

DELEGATE SAM MOORE: It is not clear as to what the position is, or what is the position of the Chair and the Delegates is with regard to the ability of the Committee, through its designees, to defend its position in regards to the language when an amendment is made.

PRESIDENT CASSELL: Okay. I think that that defense should come as the first response to that amendment rather than to recognize other people to discuss on that, since the rules that require that -- let me ask Delegate Corn to accept my allowing the Chair to designate a person to give the first response to this amendment. And we will make that the practice from now on.

DELEGATE SAM MOORE: Mr. President, the rules provide that the Chair of a Committee shall provide an individual to give a response and in my opening remarks, I had designated Mr. Michael Marcus as that person would defend the work of the committee.

PRESIDENT CASSELL: Okay. Now, that being the case and consistent with the rules to allow that kind of a response, each amendment will provide for that kind of response